

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MAURO SERRANO, III, ON BEHALF OF §
HIMSELF AND ALL OTHERS §
SIMILARLY SITUATED, §
Plaintiffs, §

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vs.

REPUBLIC SERVICES, INC. AND BFI §
WASTE SERVICES OF TEXAS, LP, §
D/B/A REPUBLIC SERVICES OF §
CORPUS CHRISTI AND D/B/A ALLIED §
WASTE SERVICES OF CORPUS §
CHRISTI, §
Defendants. §

CIVIL ACTION NO. 2:14-cv-00077

**PLAINTIFFS' OBJECTION AND RESPONSE TO DEFENDANTS'
MOTION FOR JUDGMENT ON PARTIAL FINDINGS**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff Mauro Serrano, III, individually and on behalf of all opt-in plaintiffs ("Plaintiffs"), out of an abundance of caution, hereby files this Objection and Response to Defendants' Motion for Judgment on Partial Findings ("Motion"). *See* ECF No. 230. As noted in more detail below, Defendants' Motion for Judgment on Partial Findings is moot because the Court already denied the Motion in open court.

**I.
FACTUAL SUMMARY**

This case was tried to the Bench in a trial that began on April 25, 2017 and continued through April 27, 2017. After Plaintiffs rested their case, Defendants orally moved for Judgment on Partial

Findings pursuant to Federal Rule of Civil Procedure 52(c). Before arguing the Motion, Defendants asked for, and received, permission to file a written motion with the Court's ECF system. *See* Trial Transcript, 04/27/2017, 5:16–6:2.

After hearing argument from the parties, the Court denied Defendants' Rule 52(c) Motion for Partial Findings orally, on the record. *See id.* at 25:2–4. Defendants then called their first witness and put on additional evidence before resting. After the close of evidence, both parties made their closing arguments to the Court. Counsel for Defendants again advised this Court that Defendants—understanding that the Court had already denied their motion—still intended to file their written Rule 52 motion for partial findings “just to make [their] record.” *Id.* at 95:11–14. Defendants filed their written motion with the Court the next day. *See* ECF No. 230.

II. DEFENDANTS' RULE 52(C) MOTION IS MOOT

For the following reasons, Defendants' Motion is moot and should be denied. Specifically, Rule 52(c) provides that:

Judgment on Partial Findings. If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence.

FED. R. CIV. P. 52(c). A motion for judgment on partial findings is appropriate when, after the plaintiffs have rested and before the defendants have put on evidence, the court determines that a party cannot prevail on an issue for which they bear the burden of proof. *SEE* FED. R. CIV. P. 52(c).

This rule recognizes that a “trial may end at the close of a plaintiff's case if a plaintiff has failed to maintain its claim . . . because a plaintiff has no automatic right to cross-examine a defendant's witnesses for the purpose of proving what the plaintiff failed to establish during the presentation of

its case.” *Columbia First Bank, FSB v. U.S.*, 60 Fed. Cl. 97, 101 (2004).¹ The filing (or renewing) of a Rule 52(c) Motion for Partial Findings after the close of evidence “serves no purpose and is superfluous” because the court has fully heard from both parties, and the findings would no longer be partial. *See Burke v. Cox*, Civ. A. No. 13-2154, 2014 WL 5796759, at *11 (W.D. La. Nov. 6, 2014) (addressing the defendant’s renewed motion for partial findings at the close of all evidence).

Plaintiffs recognize that Defendants filed their written motion for partial findings for the purported purpose of making a record, and not for the purpose of re-urging that motion. *See* Trial Transcript, 04/27/2017, 94:11–18. While Plaintiffs question the utility of the filing, recognizing that Defendants’ waived their right to appeal the Court’s denial of their Rule 52(c) motion, Plaintiffs—out of an abundance of caution—respond to the same by noting that it has already been ruled upon, and is therefore moot. *See In re Diener*, 483 P.R. 196, 209 (9th Cir. 2012) (“Where a party introduced evidence on her own behalf after she has moved for relief under Civil Rule 52(c), she waives her right to appeal for relief under Civil Rule 52(c).”); *Fed. Ins. Co. v. HPSC, Inc.*, 480 F.3d 26, 32 (1st Cir. 2007) (recognizing the defendant made a Rule 52(c) motion after the close of plaintiffs’ cause, but proceeded to put on evidence “thus waiving its right to appeal the denial of that motion”).

III. CONCLUSION

Plaintiffs therefore ask this Court to enter an order determining that Defendants written Motion for Judgment on Partial Findings, on file with this Court at ECF No. 230, is moot because it has already been denied.

¹ *Columbia First Bank* cites Rule 52(c) of the Rules of the United States Court of Federal Claims, which is identical, for all practical purposes, to Federal Rule of Civil Procedure 52(c).

Respectfully submitted,

ANDERSON2X, PLLC

By: /s/ Austin W. Anderson

Austin W. Anderson

Federal I.D. No. 777114

Texas Bar No. 24045189

austin@a2xlaw.com

Clif Alexander

Federal I.D. No. 1138436

Texas Bar No. 24064805

clif@a2xlaw.com

Lauren E. Braddy

Federal I.D. No. 1122168

Texas Bar No. 24071993

lauren@a2xlaw.com

819 N. Upper Broadway

Corpus Christi, Texas 78401

Telephone: (361) 452-1279

Facsimile: (361) 452-1284

ATTORNEYS IN CHARGE FOR PLAINTIFFS

OF COUNSEL:

Rose Vela
Federal I.D. 13880
State Bar No. 16958050
275 Calle Jacaranda
Brownsville, Texas 78520
Telephone: (956) 248-7673
Facsimile: (866) 596-2346

Rick Holstein
Federal I.D. No. 426800
State Bar No. 09915150
P.O. Box 331655
Corpus Christi, Texas 78401
Telephone: (361) 883-8649
Facsimile: (361) 883-3199

John Welsh
Federal I.D. No. 620195
State Bar No. 24037691
426 South Tancanhua Street
Corpus Christi, Texas 78401
Telephone: (361) 884-1967
Facsimile: (361) 883-0129

Jordan M. Anderson
Federal I.D. No. 612713
State Bar No. 24051002
819 North Upper Broadway
Corpus Christi, Texas 78401
Telephone: (361) 452-1279
Facsimile: (361) 452-1284

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2017, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Southern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Austin W. Anderson

Austin W. Anderson